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No. 85-2065

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

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SUPREME COURT, U.S.

STATE OF FLORIDA,

Petitioner,

v.

RAMON R. PINA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street - 13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

CRAIG S. BARNARD
Chief Assistant Public Defender

THOMAS F. BALL III
Assistant Public Defender

Attorneys for Respondent

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QUESTIONS PRESENTED

WHERE A STATE'S HIGHEST COURT INTERPRETS AND APPLIES THE PROVISIONS OF THE STATE'S CONSTITUTION IS A FEDERAL QUESTION PRESENTED?

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OPINIONS BELOW

The decision of the Supreme Court of the State of Florida was rendered on May 1, 1986. It is reported as State v. Pina, 487 So.2d 1055 (Fla. 1986). (See Appendix)

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated ...

Article I, Section 12, of the Florida Constitution as amended effective January 4, 1983, provides:

> SECTION 12. Searches and seizures.--The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under

> decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

(Emphasis added)

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as reflective of the events below.

REASONS FOR DENYING THE WRIT

THE FLORIDA SUPREME COURT'S APPLICATION OF THE FLORIDA CONSTITUTION DOES NOT PRESENT A FEDERAL QUESTION

Petitioner presses anew the argument that the applicability of the exclusionary rule in Florida probation revocation hearings presents a "substantial federal question." Petition for Writ of Certiorari at 10,12,14 (hereinafter "PB"). This same argument was rejected below by the Florida Supreme Court as a matter of state law. The Court should honor Florida's interpretation of its own law and refuse review.

To meet its burden of establishing the Court's jurisdiction, see Michigan v. Long, 463 U.S. 1032, 1042 n.8 (1983), Petitioner relies on an expansive view of the decision in United States v. Leon, ___ U.S. ___, 104 S.Ct. 3405 (1984), PB 7-11, and the fact that the Florida rule conflicts with a majority of the federal courts of appeal. PB 11-15. Understandably, Petitioner avoids a discussion of the decision in State v. Cross, 487 So.2d 1056 (Fla. 1986); app. A-17, upon which this case necessarily rests.[1]

Cross concerns the recent amendment to Article I, Section 12 of the Florida Constitution. Article I, Section 12 concerns the rights protecting Florida citizens against unreasonable searches and seizures. Prior to the recent amendment, that section contained an "explicit exclusionary rule of constitutional stature." State v. Dodd, 419 So.2d 333, 335 (Fla. 1982). See also Grubbs v. State, 373 So.2d 905 (Fla. 1979). The language was as follows:

> Articles or information obtained in violation of this right [against unreasonable searches and seizures] shall not be admissible in evidence.

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[1] In Pina, the Florida Supreme Court affirmed the district court of appeal "on the authority of Cross." State v. Pina, 487 So.2d at 1055. Cross was issued the same day as Pina.

The recent amendment purports to eliminate this express exclusionary rule by restating the rule as follows:

> Articles or information obtained in violation of this right [against unreasonable searches and seizures] shall not be admissible if such articles or information would be admissible under decisions of the United States Supreme Court construing the Fourth Amendment to the United States Constitution.

(emphasis supplied).

On its face, this amendment seems to implement an automatic trigger regarding interpretation of Fourth Amendment issues in Florida. However, in Cross the Florida Supreme Court faced the important state law issue of defining the role of the Florida Supreme Court in light of this amendment which seemingly allocates all power to the United States Supreme Court. The court in Cross answered that question clearly by narrowly interpreting the recent amendment and holding that state law controls unless there is an explicit decision from this Court to the contrary.

The opinion in Cross is unequivocal in its language and intent. Certainly it meets the "plain statement" test announced in Michigan v. Long, 463 U.S. at 1043. Cross establishes a fully independent state basis for its decision, precluding the Court's review, by holding that the exclusionary rule is applicable in probation revocation hearings in Florida on authority of State v. Dodd, "which is still the controlling state law." 487 So.2d at 1058 (emphasis supplied). An examination of Cross reveals no basis for Petitioner to claim federal jurisdiction. While many state courts routinely hold that various searches violate both the United States Constitution and their respective state constitutions, see generally, Michigan v. Long, 463 U.S. at 1037-44, Cross is devoid of any discussion of federal law. The only reference in Cross of any federal case, or principle, is the court's restatement of the state's argument. However, at no point does Cross address the federal concerns raised by the state. Rather, the court cut short any discussion of federal law by tersely noting that, as earlier conceded by the state, "[t]he United States Supreme Court has not ruled on the issue presently before us." 487 So.2d at 1057.

The express holding of Cross is based solidly in Florida law. Cross is an expression of two distinct Florida themes: First, the Florida Supreme Court chose to limit the effect of the recent amendment to article 1, Section 12 by adopting Cross' argument and refusing to construe the amendment liberally to the detriment of the citizens of Florida:

> When faced with constitutional amendments not clearly expressing an intent to the contrary, this Court has repeatedly refused to construe the amendment to affect detrimentally the substantive rights of persons arising under the prior law.

State v. Cross, 487 So.2d at 1057 (citing State v. Lavazzoli, 434 So.2d 321, 324 (Fla. 1983)). This is nothing more than an application of rules of construction long held by the Florida Supreme Court. See State v. Lavazzoli, supra; Myers v. Hawkins, 362 So.2d 926 (Fla. 1978); State ex rel. Reynolds v. Roan, 213 So.2d 425 (Fla. 1968). Thus, in Cross the court refused to allow modification of Florida law unless there is an explicit decision from this Court to the contrary. This is a straightforward affirmation of the duty of the Florida Supreme Court to determine Florida law liberally in favor of the rights of the citizens of Florida.

Secondly, Florida courts have been persistent in their use of state law as a basis for the exclusionary rule. Indeed, Florida courts have utilized the exclusionary rule since at least 1927, see, e.g., Gildrie v. State, 94 Fla. 134, 113 So. 704 (1927), long before it was required as a matter of federal constitutional law in Mapp v. Ohio, 367 U.S. 643 (1961). State v. Lavazzoli, 434 So.2d at 323. Therefore, Cross is only a continuation of a well-established tradition in Florida courts to exclude illegally obtained evidence. See Gildrie v. State, supra; Sing v. Wainwright, 148 So.2d 129 (Fla. 1962); Grubbs v. State, supra. Moreover, Florida courts have been more than consistent in their application over time --the exclusionary rule in Florida is widely applied "regardless of the type or nature of the proceeding in which the evidence is offered." State v. Dodd, 419 So.2d at 335. See, e.g., Markham v. Markham, 265 So.2d 59 (Fla. 1st DCA 1972) (applying the exclusionary rule of Article I,

Section 12 of the Florida Constitution to exclude evidence obtained by a husband by way of wiretapping wife's phones, in a divorce proceeding). Thus, Cross reaffirms the vitality of the exclusionary rule as a matter of established Florida law.

Petitioner seeks to avoid the "plain statement" of Cross by arguing that the result is incorrect:

> The result reached by the Florida Supreme Court -- the exclusion of illegally seized evidence in a probation revocation proceeding - is incorrect in light of the principles discussed in Morrissey v. Brewer, Gagnon v. Scarpelli, and United States v. Leon, supra.

PB 10-11. Petitioner's artful dodge of the sole basis of the opinion in Cross should not deter the Court from going beyond Petitioner's oversight and examining "the face of the opinion" of Cross. Michigan v. Long, 463 U.S. at 1041. The result, in light of federal principles, is irrelevant to that inquiry. Cross stands for an unequivocal reaffirmation of the role of the Florida Supreme Court in interpreting the still-vital Florida Constitution. The Court should honor that stand.

CONCLUSION

The opinion of the Florida Supreme Court is not inconsistent with federal law because it is wholly based on state law. Therefore, based on the grounds and authorities cited herein, the Petition for Writ of Certiorari should be DENIED.

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

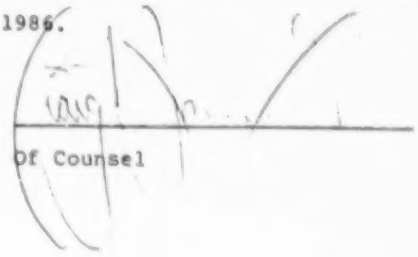
CRAIG S. BARNARD
Chief Assistant Public Defender

THOMAS F. BALL III
Assistant Public Defender

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished, by intra-county courier, to Joy B. Shearer, Assistant Attorney General, 111 Georgia Avenue, Suite 204, West Palm Beach, Florida 33401, this 11th day of July, 1986.



Of Counsel